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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 Ellison Educational Equipment, Inc.,
a California corporation,

11 Plaintiff,

12 vs.

13 Stephanie Barnard Designs, Inc., a
California corporation d/b/a The
14 Stamps of Life, Stephanie Barnard, an
individual and Does 1-10,

15 Defendants.

16 CASE NO. 8:18-cv-02043-DOC-ADS

17 **STIPULATED PROTECTIVE**
18 **ORDER**

19 **I. PURPOSES AND LIMITATIONS**

20 A. Discovery in this action is likely to involve production of
21 confidential, proprietary, or private information for which special protection from
22 public disclosure and from use for any purpose other than prosecuting this
23 litigation may be warranted. Accordingly, the parties hereby stipulate to and
24 petition the Court to enter the following Stipulated Protective Order. The parties
acknowledge that this Order does not confer blanket protections on all disclosures

1 or responses to discovery and that the protection it affords from public disclosure
2 and use extends only to the limited information or items that are entitled to
3 confidential treatment under the applicable legal principles. The parties further
4 acknowledge, as set forth in Section XIII(C), below, that this Stipulated Protective
5 Order does not entitle them to file confidential information under seal; Civil Local
6 Rule 79-5 sets forth the procedures that must be followed and the standards that
7 will be applied when a party seeks permission from the Court to file material
8 under seal.

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10 **II. GOOD CAUSE STATEMENT**

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12 A. This action is likely to involve trade secrets, customer and pricing
13 lists and other valuable research, development, commercial, financial, technical
14 and/or proprietary information for which special protection from public disclosure
15 and from use for any purpose other than prosecution of this action is warranted.
16 Such confidential and proprietary materials and information consist of, among
17 other things, confidential business or financial information, information regarding
18 confidential business practices, or other confidential research, development, or
19 commercial information (including information implicating privacy rights of third
20 parties), information otherwise generally unavailable to the public, or which may
21 be privileged or otherwise protected from disclosure under state or federal
22 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
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1 flow of information, to facilitate the prompt resolution of disputes over
2 confidentiality of discovery materials, to adequately protect information the
3 parties are entitled to keep confidential, to ensure that the parties are permitted
4 reasonable necessary uses of such material in preparation for and in the conduct of
5 trial, to address their handling at the end of the litigation, and serve the ends of
6 justice, a protective order for such information is justified in this matter. It is the
7 intent of the parties that information will not be designated as confidential for
8 tactical reasons in this case and that nothing be so designated without a good faith
9 belief that there is good cause why it should not be part of the public record of this
10 case.

13 Unrestricted or unprotected disclosure of such confidential technical,
14 commercial or personal information would result in prejudice or harm to the
15 producing party by revealing the producing party's competitive confidential
16 information, which has been developed at the expense of the producing party and
17 which represents valuable tangible and intangible assets of that party.
18 Additionally, privacy interests must be safeguarded. Accordingly, the parties
19 respectfully submit that there is good cause for the entry of this Protective Order.

21 **III. DEFINITIONS**

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1 A. Action: *Ellison Educational Equipment, Inc. v. Barnard Designs,*
2 *Inc. d/b/a The Stamps of Life, et al.*, Case No. 8:18-cv-02043-DOC-ADS
3 and related cross-action.

4 B. “ATTORNEYS’ EYES ONLY” Information or Items: extremely
5 sensitive “Confidential Information or Items,” disclosure of which to
6 another Party or Non-Party would create a substantial risk of serious harm
7 that could not be avoided by less restrictive means.

8 C. Challenging Party: A Party or Non-Party that challenges the
9 designation of information or items under this Order.

10 D. “CONFIDENTIAL” Information or Items: Information (regardless
11 of how it is generated, stored or maintained) or tangible things that qualify
12 for protection under Federal Rule of Civil Procedure 26(c), and as specified
13 above in the Good Cause Statement.

14 E. Designating Party: A Party or Non-Party that designates information
15 or items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

17 F. Disclosure or Discovery Material: All items or information,
18 regardless of the medium or manner in which it is generated, stored, or
19 maintained (including, among other things, testimony, transcripts, and

1 tangible things), that are produced or generated in disclosures or responses
2 to discovery in this matter.

3 G. Expert: A person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its
5 counsel to serve as an expert witness or as a consultant in this Action.
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7 H. Non-Party: Any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

9 I. Outside Counsel of Record: Attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this
11 Action and have appeared in this Action on behalf of that party or are
12 affiliated with a law firm which has appeared on behalf of that party, and
13 includes support staff.
14

15 K. Party: Any party to this Action, including all of its officers,
16 directors, employees, consultants, retained experts, and Outside Counsel of
17 Record (and their support staffs).
18

19 L. Producing Party: A Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 M. Professional Vendors: Persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing
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1 exhibits or demonstrations, and organizing, storing, or retrieving data in any
2 form or medium) and their employees and subcontractors.

3 N. Protected Material: Any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 O. Receiving Party: A Party that receives Disclosure or Discovery
6 Material from a Producing Party.

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8 IV. SCOPE

9 A. The protections conferred by this Stipulation and Order cover not
10 only Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.

14 B. Any use of Protected Material at trial shall be governed by the orders
15 of the trial judge or a separate agreement between the parties. This Order does not
16 govern the use of Protected Material at trial.

17 C. The protections conferred by this Stipulation and Order do not cover:
18 (i) any information that is in the public domain at the time of disclosure to a
19 Receiving Party or becomes part of the public domain after its disclosure to a
20 Receiving Party as a result of publication not involving a violation of this Order,
21 including becoming part of the public record through trial or otherwise; and (ii)
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1 any information known to the Receiving Party prior to the disclosure or obtained
2 by the Receiving Party after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the Designating
4 Party.
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6 **V. DURATION**

7 A. Even after final disposition of this litigation, the confidentiality
8 obligations imposed by this Order shall remain in effect until a Designating Party
9 agrees otherwise in writing or a court order otherwise directs. Final disposition
10 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
11 Action, with or without prejudice; and (2) final judgment herein after the
12 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
13 of this Action, including the time limits for filing any motions or applications for
14 extension of time pursuant to applicable law.

16 **VI. DESIGNATING PROTECTED MATERIAL**

17 A. Exercise of Restraint and Care in Designating Material for Protection

18 1. Each Party or Non-Party that designates information or items
19 for protection under this Order must take care to limit any such
20 designation to specific material that qualifies under the appropriate
21 standards. The Designating Party must designate for protection only
22 those parts of material, documents, items, or oral or written
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communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

2. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

3. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

B. Manner and Timing of Designations

1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

2. Designation in conformity with this Order requires the following:

1 a. For information in documentary form (e.g., paper or
2 electronic documents, but excluding transcripts of depositions
3 or other pretrial or trial proceedings), that the Producing Party
4 affix at a minimum, the legend “CONFIDENTIAL”
5 (hereinafter “CONFIDENTIAL legend”), or “ATTORNEYS’
6 EYES ONLY” (hereinafter “ATTORNEYS’ EYES ONLY
7 legend”) to each page that contains protected material. If only
8 a portion or portions of the material on a page qualifies for
9 protection, the Producing Party also must clearly identify the
10 protected portion(s) (e.g., by making appropriate markings in
11 the margins).

14 b. A Party or Non-Party that makes original documents
15 available for inspection need not designate them for protection
16 until after the inspecting Party has indicated which documents
17 it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for
19 inspection shall be deemed “CONFIDENTIAL.” After the
20 inspecting Party has identified the documents it wants copied
21 and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under
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this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” or “ATTORNEYS’ EYES ONLY legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

- c. For testimony given in depositions, that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

d. For information produced in form other than document and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

C. Inadvertent Failure to Designate

1 1. If timely corrected, an inadvertent failure to designate qualified
2 information or items does not, standing alone, waive the Designating
3 Party's right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must
5 make reasonable efforts to assure that the material is treated in
6 accordance with the provisions of this Order.

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8 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 A. Timing of Challenges

10 1. Any party or Non-Party may challenge a designation of
11 confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13

14 B. Meet and Confer

15 1. The Challenging Party shall initiate the dispute resolution
16 process under Local Rule 37.1 et seq.

17 C. The burden of persuasion in any such challenge proceeding shall be
18 on the Designating Party. Frivolous challenges, and those made for an
19 improper purpose (e.g., to harass or impose unnecessary expenses and
20 burdens on other parties) may expose the Challenging Party to sanctions.
21 Unless the Designating Party has waived or withdrawn the confidentiality
22 designation, all parties shall continue to afford the material in question the
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level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VIII. ACCESS TO AND USE OF PROTECTED MATERIAL

A. Basic Principles

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

2. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

B. Disclosure of “CONFIDENTIAL” Information or Items

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

a. The Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of

1 Record to whom it is reasonably necessary to disclose the
2 information for this Action;

3 b. The officers, directors, and employees of the Receiving
4 Party to whom disclosure is reasonably necessary for this
5 Action;

6 c. Experts (as defined in this Order) of the Receiving Party
7 to whom disclosure is reasonably necessary for this Action and
8 who have signed the “Acknowledgment and Agreement to Be
9 Bound” (Exhibit A);

10 d. The Court and its personnel;

11 e. Court reporters and their staff;

12 f. Professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably
14 necessary or this Action and who have signed the
15 “Acknowledgment and Agreement to be Bound” attached as
16 Exhibit A hereto;

17 g. The author or recipient of a document containing the
18 information or a custodian or other person who otherwise
19 possessed or knew the information;

h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

- i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

C. Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any

information or item designated "ATTORNEYS' EYES ONLY" only
to:

- a. The Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
 - b. Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
 - c. The Court and its personnel;
 - d. Court reporters and their staff;
 - e. Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary or this Action and who have signed the "Acknowledgment and Agreement to be Bound" attached as Exhibit A hereto;
 - f. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
 2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
 3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

1 B. If the Designating Party timely seeks a protective order, the Party
2 served with the subpoena or court order shall not produce any information
3 designated in this action as “CONFIDENTIAL” or “ATTORNEYS’ EYES
4 ONLY” before a determination by the Court from which the subpoena or
5 order issued, unless the Party has obtained the Designating Party’s
6 permission. The Designating Party shall bear the burden and expense of
7 seeking protection in that court of its confidential material and nothing in
8 these provisions should be construed as authorizing or encouraging a
9 Receiving Party in this Action to disobey a lawful directive from another
10 court.

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12 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 A. The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
16 information produced by Non-Parties in connection with this litigation is protected
17 by the remedies and relief provided by this Order. Nothing in these provisions
18 should be construed as prohibiting a Non-Party from seeking additional
19 protections.

20 B. In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
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1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

- 3 1. Promptly notify in writing the Requesting Party and the Non-
4 Party that some or all of the information requested is subject to a
5 confidentiality agreement with a Non-Party;
6
- 7 2. Promptly provide the Non-Party with a copy of the Stipulated
8 Protective Order in this Action, the relevant discovery request(s), and
9 a reasonably specific description of the information requested; and
10
- 11 3. Make the information requested available for inspection by the
12 Non-Party, if requested.

13 C. If the Non-Party fails to seek a protective order from this court
14 within 14 days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information responsive
16 to the discovery request. If the Non-Party timely seeks a protective order, the
17 Receiving Party shall not produce any information in its possession or control that
18 is subject to the confidentiality agreement with the Non-Party before a
19 determination by the court. Absent a court order to the contrary, the Non-Party
20 shall bear the burden and expense of seeking protection in this court of its
21 Protected Material.

22 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

1 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
2 disclosed Protected Material to any person or in any circumstance not authorized
3 under this Stipulated Protective Order, the Receiving Party must immediately (1)
4 notify in writing the Designating Party of the unauthorized disclosures, (2) use its
5 best efforts to retrieve all unauthorized copies of the Protected Material, (3)
6 inform the person or persons to whom unauthorized disclosures were made of all
7 the terms of this Order, and (4) request such person or persons to execute the
8 “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit
9
10 A.

11 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR**
12 **OTHERWISE PROTECTED MATERIAL**

14 A. When a Producing Party gives notice to Receiving Parties that certain
15 inadvertently produced material is subject to a claim of privilege or other
16 protection, the obligations of the Receiving Parties are those set forth in Federal
17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
18 whatever procedure may be established in an e-discovery order that provides for
19 production without prior privilege review.

21 **XIII. MISCELLANEOUS**

22 A. Right to Further Relief

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

XIV. FINAL DISPOSITION

A. After the final disposition of this Action, as defined in Section V, within sixty (60) days of a written request by the Designating Party, each

1 Receiving Party must return all Protected Material to the Producing Party or
2 destroy such material. As used in this subdivision, “all Protected Material”
3 includes all copies, abstracts, compilations, summaries, and any other format
4 reproducing or capturing any of the Protected Material. Whether the Protected
5 Material is returned or destroyed, the Receiving Party must submit a written
6 certification to the Producing Party (and, if not the same person or entity, to the
7 Designating Party) by the 60 day deadline that (1) identifies (by category, where
8 appropriate) all the Protected Material that was returned or destroyed and (2)
9 affirms that the Receiving Party has not retained any copies, abstracts,
10 compilations, summaries or any other format reproducing or capturing any of the
11 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
12 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
13 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
14 reports, attorney work product, and consultant and expert work product, even if
15 such materials contain Protected Material. Any such archival copies that contain
16 or constitute Protected Material remain subject to this Protective Order as set forth
17 in Section V.

21 B. Any violation of this Order may be punished by any and all
22 appropriate measures including, without limitation, contempt proceedings and/or
23 monetary sanctions.
24

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2 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
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4 Dated: _____
5

6 Douglas Q. Hahn
7 Salil S. Bali
8 Sheila Mojtehedi
9 Attorney(s) for Plaintiff
10 Ellison Educational Equipment, Inc.
11

12 Dated: _____
13

14 Attorney(s) for Defendant(s)
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16 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**
17

18 Dated: June 20, 2019
19

20 _____ /s/ Autumn D. Spaeth
21 HONORABLE AUTUMN D. SPAETH
22 United States Magistrate Judge
23
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

2

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on _____
7 in the case of *Ellison Educational Equipment, Inc. v. Barnard Designs, Inc. d/b/a The*
8 *Stamps of Life, et al.*, Case No. 8:18-cv-02043-DOC-ADS. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in
10 the nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or
12 entity except in strict compliance with the provisions of this Order.

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14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed Name: _____

23 Signature: _____